

<b>AMANDA TERRY</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,020,308
<b>QUAKER OATS COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>FIDELITY &amp; GUARANTY INSURANCE</b>	)	
Insurance Carrier	)	

<sup>1</sup> Keri Nihart, who testified in a deposition in this matter, works as a quality assurance technician for respondent.

acknowledges she made no mention of the incident or the shoulder problems until October 26, 2004, when she alleges she told her supervisor, Chris Butler. Mr. Butler, who testified in a deposition in this matter, denied being told by claimant that she had suffered any type of work-related shoulder injury. He testified that on October 26, claimant advised him that she was feeling ill and wanted to go home. Mr. Butler, knowing that claimant was very close to termination because of attendance problems, did not send claimant home, but instead, assigned her to a job called rework in order to keep her on the job.

Respondent also provided the testimony of quality assurance technician Keri Nihart. Ms. Nihart testified that on October 25, she asked claimant how she was feeling because, she testified, claimant did not seem well. Claimant said she was sore from the night before, after being in a fight in Aggieville and being struck in the shoulder. Ms. Nihart testified that claimant indicated it was her left shoulder that was struck, which coincidentally is the same shoulder claimant is alleging was injured on October 22.

Claimant admitted telling Ms. Nihart that she was sore and, at one point, testified that she told Ms. Nihart that she had pulled someone away from the fight, which involved her brother and several unknown individuals, but denied being struck in the shoulder. Claimant provided the witness testimony of a personal friend, Donald Ross, who was in a vehicle at the time of the Aggieville incident observing the altercation which was going on outside of the vehicle. Mr. Ross denied seeing claimant being struck in any fashion and further denied seeing claimant grab anyone. Mr. Ross's and claimant's testimony conflicts with regard to how claimant's brother exited the vehicle and whether claimant actually had any physical contact with any of the combatants. Additionally, Mr. Ross denied seeing claimant's brother in a headlock, while claimant testified that her brother was indeed placed in a headlock by one of the combatants.

The ALJ specifically stated in his Order that Ms. Nihart was a credible witness and denied claimant benefits for the alleged injury.

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.<sup>2</sup>

Claimant's entitlement to benefits, in this instance, hinges almost entirely on the credibility of claimant, Mr. Ross and Ms. Nihart. The ALJ, in this instance, made a specific finding that Ms. Nihart was credible, thereby inferring that Mr. Ross and claimant were less than credible.

An administrative law judge is in the position to observe in-person testimony of the various witnesses, thereby being able to assess the credibility of those witnesses. The Board will generally give some deference to an administrative law judge's determination

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<sup>2</sup> K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).

regarding credibility because of this opportunity. In this instance, the Board finds that the evidence supports the ALJ's determination that claimant failed to prove accidental injury arising out of and in the course of her employment. The Board, therefore, affirms the ALJ's denial of benefits in this matter.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated April 15, 2005, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2005.

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BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant  
James C. Wright, Attorney for Respondent and its Insurance Carrier  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director